

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re LEILA C., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RAQUEL C.,

Defendant and Appellant.

D057587

(Super. Ct. No. J517678)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M.
Elias, Judge. Affirmed.

Raquel C. appeals a judgment declaring her minor daughter, Leila C., a dependent
of the juvenile court under Welfare and Institutions Code¹ section 300, subdivision (b),
based on findings Leila had multiple injuries, inflicted nonaccidentally, that would not

¹ Statutory references are to the Welfare and Institutions Code.

have occurred unless they were the result of her parents' unreasonable or neglectful acts or omissions. Raquel challenges the sufficiency of the evidence to support the court's jurisdictional findings. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Leila was born in May 2008 to Raquel and Hector T.² Raquel moved in with her boyfriend, Jeremiah P., when Leila was 15 months old. Jeremiah cared for Leila while Raquel worked part time. Leila was never in anyone else's care.

On the morning of December 4, 2009, Raquel was at work when Jeremiah discovered Leila was having a seizure. He telephoned Raquel and asked her to come home. In the meantime, Jeremiah prepared a bath to make Leila more alert. He noticed she was not holding herself upright and was leaning to her left side. Raquel and Jeremiah took Leila to the pediatrician's office and then to the hospital emergency room.

A physical examination and tests showed Leila had a subacute or chronic subdural hematoma (hemorrhage) on the right side of her brain and bone fractures of her left humerus (upper arm) and left radius (wrist). Her subdural hematoma caused her to have seizures.

When questioned about how Leila's injuries could have occurred, Jeremiah said that three or four weeks earlier, Leila was having a tantrum at home, and in an attempt to prevent her from falling off the couch, he grabbed her left arm and put his hand on her head to support her. He heard a "pop," but Leila did not cry or seem to be in pain.

² Hector is not a party to this appeal.

Raquel agreed Leila's fractures likely occurred when Leila threw herself off the couch and Jeremiah caught her. The day after that incident, Raquel took Leila to the pediatrician, Philip D. Szold, M.D., who diagnosed a dislocated elbow and performed a procedure to fix it. Leila's arm appeared to be healed five days later. Raquel said Leila's head injury could have been caused when Leila fell and hit her head on the floor at a basketball game a week before Leila's hospitalization, but no one saw it happen. She later changed her story, claiming she saw Leila fall at the basketball game.

Child abuse expert Joyce A. Adams, M.D., concluded Leila's injuries were the result of inflicted trauma. In Dr. Adams's opinion, the procedure used by Dr. Szold could not have caused the fractures, and Raquel's explanation for the fractures and head trauma was not tenable.

The San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (b). The court detained Leila with Hector, ordered supervised visits for Raquel and ordered no contact between Leila and Jeremiah.

Raquel submitted declarations of two friends stating they did not believe Raquel or Jeremiah would intentionally harm Leila. Dr. Szold wrote a letter expressing doubt that either Raquel or Hector would abuse Leila. Raquel consulted with Thomas J. Grogan, M.D., who stated that although nonaccidental trauma or abuse could not be ruled out, he believed Leila's injuries could have occurred accidentally.

At a contested jurisdiction and disposition hearing, the court received in evidence Agency's reports, as well as Raquel's initial therapy treatment plan and treatment update,

several reports from Raquel's and Jeremiah's child abuse prevention class, a document containing Dr. Szold's notes and a letter from Raquel's therapist.

Jeremiah testified Raquel and Leila moved in with him after he and Raquel had dated for two months. He took care of Leila when Raquel was at work. Jeremiah and Raquel were Leila's only caregivers.

Jeremiah described how Leila hurt her arm when she fell off the couch and he caught her. Raquel was in the kitchen at the time and did not see this happen. Leila did not cry, seem to be in pain or have difficulty moving her arm. Raquel took Leila to Dr. Szold the next day. During the next month, Jeremiah saw nothing to indicate Leila's arm was injured. He did not know how Leila could have sustained a head injury. He never disciplined her and had no reason to believe anyone had injured her.

Jeremiah further testified about the events leading up to Leila's hospitalization. After he realized something was wrong with Leila, he telephoned Raquel to say there was an emergency. He did not call 911 or immediately take Leila to the emergency room. Jeremiah and Raquel took Leila to Dr. Szold's office before going to the hospital emergency room.

Raquel testified she observed Jeremiah's interactions with Leila before allowing Jeremiah to care for her. Leila never appeared to be afraid of him. Raquel never saw Jeremiah mistreat Leila or yell at her. She and Jeremiah agreed they would not physically discipline Leila.

Raquel said she witnessed Jeremiah catch Leila as she started to fall off the couch. Because Leila did not appear to be hurt and was able to move her arm, Raquel did not

suspect she had a broken bone. For the next month, Leila had no trouble using her left arm and never seemed to be in pain. Raquel had no idea how the fractures could have happened.

As to the events of December 4, 2009, Raquel testified she came home after Jeremiah called to tell her something was wrong with Leila. Although Raquel assumed Leila's condition was serious, she did not call 911 or go directly to the emergency room.

Raquel believed Leila was accidentally injured, and no one intentionally harmed her. She disagreed with the doctors who said Leila's injuries were caused by an intentional act. Raquel believed Leila's head injury occurred when she fell at a basketball game five or six days before Leila was hospitalized. Although Raquel heard a "thump" when Leila hit her head, Leila did not cry and there was no bruising. Raquel did not take Leila to the doctor following this incident. She believed Leila's arm fractures occurred either when she played with other children or when Jeremiah caught her as she fell off the couch.

Raquel further testified she intended to continue living with Jeremiah. She preferred to have custody of Leila and live with Jeremiah, but she was willing to live elsewhere if Leila were returned to her. In retrospect, there was nothing Raquel would have done differently to ensure Leila's safety.

Dr. Adams testified she consulted with a radiologist in assessing Leila's case. The radiologist concluded both fractures were healing and were about 10 days to four weeks old. In Dr. Adams's opinion, Leila's fractures were likely the result of child abuse. Leila had an oblique fracture of her humerus, which was caused by twisting. The force

required to inflict this fracture was more than a prudent parent would use when handling a child. Because significant force caused Leila's fracture, it could not have occurred by someone simply catching her during a fall. Leila's radius fracture was at the growth plate at the end of the wrist (a corner fracture). This type of fracture is caused by someone forcefully pulling on the extremity. Grabbing a child's arm would not cause a corner fracture. A corner fracture is almost exclusively caused by abuse.

As to Leila's subdural hematoma, Dr. Adams noted blood had spread over three portions of her brain on the right side. After consulting with a neuroradiologist, Dr. Adams concluded Leila's head injury was more than two weeks old. Testing ruled out a metabolic disorder or vitamin K deficiency as a cause of the subdural hematoma. This type of injury usually occurs without a skull fracture in abuse cases. For a child Leila's age, a significant amount of rotational force, more than a prudent parent would use, was needed to cause a subdural hematoma. Because there was no swelling, Dr. Adams believed Leila's subdural hematoma was caused by rotational force rather than an impact. Leila's fall at a basketball game five or six days before she was hospitalized could not account for the subdural hematoma. Had Leila's head hit the floor hard enough to cause a subdural hematoma, she would have been in obvious pain and anyone who saw her fall would have known she had been hurt.

Dr. Adams further testified Leila's seizure and left-side weakness were consistent with a subdural hematoma on the right side of the brain. Although a very high fever could sometimes cause a subdural hematoma, Leila did not have a fever when she was

admitted to the hospital. Because Leila's subdural hematoma was spread over a large area of her brain, the injury could not have been accidental.

In Dr. Adams's opinion, each fracture and the subdural hematoma could have occurred at different times or at the same time. Together, the subdural hematoma and corner fracture of the radius were highly suspicious for inflicted injury. All three injuries could have resulted from someone grabbing Leila by the arm, jerking hard and swinging her, causing a rotational motion of her head.

Social worker Phalin Louischaroen testified she performed a risk assessment in Leila's case. She considered Leila's age, the severity, type and location of her injuries, the caregivers' access to Leila, and the likely cause of her injuries. In Louischaroen's opinion, Leila would be at high risk in Raquel's care. Before Louischaroen recommended returning Leila to Raquel, she would like Raquel to understand and acknowledge the origin and seriousness of Leila's injuries. She would also like Raquel to take responsibility for causing the injuries or failing to protect Leila from the person who caused them. As long as Raquel was in denial about how the injuries occurred, she would not be able to protect Leila. Further, Louischaroen believed Raquel lacked empathy for Leila because she focused on her positive parenting skills instead of on the cause and seriousness of Leila's injuries.

Dr. Szold testified about how he performed a maneuver, using very little force, to repair Leila's dislocated elbow. He did not believe Leila had a fracture at the time he performed the maneuver because she did not react as if she were in pain. Dr. Szold stated

it is very uncommon for a child to have a fractured humerus without noticeable pain in the first few days after the fracture occurred.

Dr. Grogan, a pediatric orthopedic surgeon, testified he reviewed Leila's medical records, Agency's reports and police reports. He did not consult with the radiologists who reviewed Leila's X-rays. Dr. Grogan believed Leila's radius fracture was not a corner fracture and, thus, it could have been caused by Leila falling on an outstretched arm. He also stated the humerus fracture was a nondisplaced fracture, which was less likely to be noticed by a parent. A rotational movement would have caused the humerus fracture, which could have happened when someone held Leila's arm while she rotated her body and threw herself back. It also could have happened when someone lifted Leila by the arm.

In Dr. Grogan's opinion, the subdural hematoma was probably a few weeks old and was possibly caused by Leila throwing herself backward and hitting her head on a hard surface like a basketball court. It was possible for a child to sustain a subdural hematoma without swelling, a skull fracture or a retinal hemorrhage. Dr. Grogan did not rule out the possibility Leila's subdural hematoma was caused by abuse. He could not give an opinion as to whether Leila's injuries were accidental or inflicted.

Raquel's therapist, Jennifer Lundy, testified Raquel mentioned Leila had only one bone fracture. Raquel met her therapeutic goal of acknowledging Leila had serious physical injuries, which must have occurred while she was in Raquel's or Jeremiah's care. However, Raquel denied she or Jeremiah intentionally harmed Leila. Raquel had the

capacity to accept that Leila's injuries were nonaccidental, but it would be emotionally difficult for her to do so.

After considering the evidence and arguments of counsel, the court sustained the allegations of the petition under section 300, subdivision (b), specifically finding Jeremiah, not Raquel, had inflicted Leila's injuries. As to disposition, the court ordered Leila placed with her parents. The court also ordered contact between Jeremiah and Leila was to be supervised, but not by Raquel.

DISCUSSION

Raquel challenges the sufficiency of the evidence to support the court's jurisdictional findings under section 300, subdivision (b). She asserts the evidence was inconclusive as to the mechanism of Leila's injuries, which the court expressly found were not "a direct result of anything [Raquel] did." Thus, she argues, the court could not reasonably find Leila was at substantial risk of harm in Raquel's care based on her refusal to blame Jeremiah or otherwise acknowledge the cause of the injuries.

A

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. Evidence is "substantial" if it is " 'reasonable, credible, and of solid value.' " (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. (*In*

re Casey D. (1999) 70 Cal.App.4th 38, 52-53; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 230.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's findings or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure or inability to adequately supervise or protect the child, or the willful or negligent failure of the parent to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left. A jurisdictional finding under section 300, subdivision (b) requires: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) serious physical harm or a substantial risk of serious physical harm to the minor. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*" (§ 300.2, italics added.)

C

Here, the evidence showed Leila had two bone fractures and a subdural hematoma, all from inflicted trauma. Dr. Adams and Dr. Grogan agreed Leila's humerus fracture was caused by a twisting or rotational motion. In Dr. Adams's opinion, this fracture was the result of significant force—more than a prudent parent would use. Someone catching

Leila as she fell off a couch would not have caused this injury. Dr. Adams also concluded Leila's radius fracture resulted from someone forcefully pulling on her wrist, and this type of injury was almost always caused by abuse. Further, Dr. Adams believed Leila's subdural hematoma was caused by significant rotational force, which a prudent parent would not use, and this injury was not likely caused by an impact. The explanation that Leila had fallen on a hard surface five or six days before she was hospitalized was inconsistent with the timing and type of head injury she sustained.

Although Dr. Grogan had other explanations for the mechanism of how Leila's fractures and subdural hematoma possibly occurred, the court was entitled to give greater weight to Dr. Adams's opinion than that of Dr. Grogan.³ (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.) In this regard, we defer to the juvenile court, having no power to judge the effect, value or weight of the evidence, consider the credibility of witnesses or resolve conflicts in the evidence. (*In re S.A.*, *supra*, 182 Cal.App.4th at p. 1140; *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194.) "We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) Substantial evidence supports the court's finding Leila suffered serious physical harm inflicted nonaccidentally.

³ In any event, Dr. Grogan could not give an opinion as to whether each injury was accidental or inflicted.

D

In arguing substantial evidence does not support the court's jurisdictional order, Raquel relies on the court's finding she did not directly cause Leila's injuries. However, the evidence supported a finding Leila's injuries were the result of Raquel's failure or inability to adequately supervise or protect Leila. (§ 300, subd. (b).)⁴ The uncontroverted evidence showed Leila sustained her injuries while she was in Raquel's or Jeremiah's care. Regardless of who perpetrated the abuse, primary responsibility for Leila's safety and well-being remained with Raquel, who had not been able to understand or acknowledge that Leila's serious injuries were the result of forceful and violent conduct. Raquel instead maintained Leila's fractures occurred accidentally, despite expert medical opinions to the contrary. Although there was no evidence Raquel inflicted Leila's injuries, she continued to pose a risk of harm to Leila by denying the injuries were the result of inflicted trauma and by not accepting responsibility for her failure to protect Leila. (See *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1439.)

Further, based on the evidence, a reasonable inference could be drawn that Jeremiah inflicted Leila's injuries. When confronted with this possibility, Raquel refused to believe Jeremiah could have roughly handled Leila. She chose instead to defend

⁴ Agency did not file the petition under section 300, subdivision (a), which requires a finding the child has suffered serious physical harm inflicted nonaccidentally by the child's parent or guardian. (See *In re David H.* (2008) 165 Cal.App.4th 1626, 1641.) Raquel did not have to inflict Leila's injuries to support a finding under section 300, subdivision (b).

Jeremiah, postulating about how Leila's bone fractures accidentally happened and changing her story about how Leila's subdural hematoma might have occurred. Raquel also stated her intention to continue living with Jeremiah and maintained she would not have done anything differently to ensure Leila's safety. Because Raquel remains in denial and lacks insight about the nonaccidental nature of Leila's injuries, and refuses to consider that Jeremiah may have inflicted those injuries, a substantial risk of future harm exists for Leila without juvenile court intervention.

E

Citing *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, Raquel asserts she was confronted with a "confession dilemma," because she was given a choice to "lie under oath and say she knew the cause of the injuries or forever pose a risk to her child in the eye of the social worker." In *Blanca P.*, the juvenile court relied on the parents' denial of a molestation allegation to find detriment in returning the minors to the parents' custody. The detriment finding was made "without ever examining whether any molestation ever really occurred." (*Id.* at p. 1742.) At the time of the 18-month review hearing, there was substantial new evidence that cast doubt on the initial jurisdictional finding of molestation. (*Id.* at p. 1754.) Nevertheless, the court terminated the parents' reunification services, relying on the social worker's opinion it would be detrimental to return the minors to parental custody because the parents continued to deny the molestation occurred. (*Id.* at p. 1747.)

The Court of Appeal held the juvenile court erred by not reconsidering whether the molestation actually occurred, given the parents' new evidence supporting their

denial. (*Blanca P. v. Superior Court, supra*, 45 Cal.App.4th at p. 1757.) The court noted that under those circumstances, it was unfair to use the parents' denial of the molestation as evidence the sexual molestation occurred. (*Id.* at pp. 1752-1753.)

Here, in contrast, the court did not rely on Raquel's denial of abuse to make its jurisdictional findings. There is no dispute Leila had serious physical injuries, and substantial evidence showed those injuries were the result of nonaccidental trauma that occurred while Leila was in Raquel's or Jeremiah's care. Raquel was not required to testify she knew the cause of the injuries. Instead, the court was entitled to consider the social worker's assessment that based on Raquel's inability or unwillingness to acknowledge Leila's injuries could have been inflicted by Jeremiah, Leila was at substantial risk of harm in the future. Substantial evidence supports the court's jurisdictional findings under section 300, subdivision (b).

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.